

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 JOSEPH NAPOLEON WARREN III,

Case No.: 2:19-cv-01113-JAD-NJK

4 Petitioner

5 v.

**Order Dismissing Case and Denying
Motion for Appointment of Counsel**

6 HOWELL, et al.,

[ECF Nos. 1, 3, 7]

7 Respondents
8

9 Petitioner Joseph Napoleon Warren, III petitioned for a writ of habeas corpus under 28
10 U.S.C. § 2254.¹ I issued an order to show cause as to whether the petition should be dismissed
11 as time-barred under the Anti-Terrorism and Effective Death Penalty Act's (AEDPA) one-year
12 statute of limitations.² In the show-cause order, I noted that it appeared from the state-court
13 record that AEDPA's deadline for Warren to file a federal habeas petition had expired nearly
14 twenty-six years before Warren filed this petition.³ Because Warren has failed to demonstrate
15 that his petition was filed within the limitations period or that he is entitled to equitable tolling of
16 the AEDPA deadline, I dismiss his petition.

17 **Discussion**

18 Warren responds to the show-cause order by contending that he is entitled to equitable
19 tolling of the one-year limitations period on the basis of the "magnitude of the constitutional
20 violations" in his case.⁴ He asserts that the guilt and penalty phases of his trial should have been

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22 ¹ ECF No. 1-1.

23 ² ECF No. 6.

³ *Id.*

⁴ ECF No. 7 at 2.

1 bifurcated and that the prosecutor committed misconduct.⁵ He also includes as exhibits the jury
2 instructions from the trial against him, excerpts from the trial transcript, the jury verdict, and the
3 case summary.⁶ But Warren does not attempt to explain how he diligently pursued his rights or
4 how some extraordinary circumstance stood in his way during these intervening decades.⁷ His
5 response is silent as to why he did not pursue federal habeas relief earlier.⁸

6 I find that Warren has failed to demonstrate a sufficient basis for equitable tolling or to
7 otherwise excuse the delay. Because Warren's federal habeas petition was untimely filed, and
8 because Warren has not shown that he is entitled to statutory or equitable tolling, I dismiss
9 Warren's petition as untimely.

10 IT IS THEREFORE ORDERED that the petition (**ECF No. 1-1**) is **DISMISSED with**
11 **prejudice.**

12 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED** because
13 jurists of reason would not find the court's dismissal of this decades-late petition to be debatable
14 or incorrect.

15 IT IS FURTHER ORDERED that petitioner's motion for appointment of counsel (**ECF**
16 **No. 3**) is **DENIED** as moot.

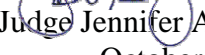
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21 ⁵ *Id.* at 3.

22 ⁶ *Id.* at 6–29.

23 ⁷ See *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005); *Calderon v. U.S. Dist. Court (Beeler)*, 128
F.3d 1283, 1288 (9th Cir. 1997), *overruled in part on other grounds*, *Calderon v. U.S. Dist.*
Court (Kelly), 163 F.3d 530 (9th Cir. 1998).

⁸ See ECF No. 7.

1 IT IS FURTHER ORDERED that the Clerk of Court is directed to DETACH AND FILE
2 THE PETITION (ECF No. 1-1), ENTER JUDGMENT accordingly, and CLOSE THIS CASE.
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6 U.S. District Judge Jennifer A. Dorsey
7 October 28, 2019
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